

FILED 10 JAN 15 2010 USDC OR

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CALEB HURLEY, through his guardian ad
litem JILL LANE,

CV 08-1365-ST

Plaintiff,

ORDER

v.

HORIZON PROJECT, INC, et al.,

Defendants.

JACKSON COUNTY, MEGAN DANIELS,
UMATILLA COUNTY, RICHARD
GARDUNO, and DENNIS DAHLEN,

Third-Party Plaintiffs,

v.

STATE OF OREGON, LAURIE
LINDBERG, JIM RANSOM, and JANE
AND JOHN DOE,

Third-Party Defendants.

REDDEN, Judge:

On December 3, 2009, Magistrate Judge Janice Stewart filed her Findings and Recommendation (doc. 84) that the court grant the State of Oregon's Motions to Dismiss the third-party complaints (docs. 42 & 55), and deny the county defendants' Motions to Dismiss and Alternative Motions (docs. 57 & 61).

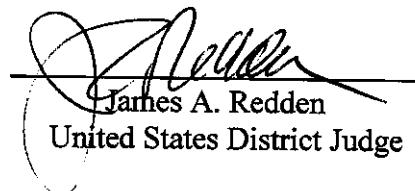
The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rules of Civil Procedure 72(b) and 54(d)(2)(D). The district court is not bound by the recommendations of the magistrate judge, and "may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). When either party timely objects to any portion of the magistrate's Findings and Recommendation, the district court must conduct a de novo review of those portions of the magistrate's report. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); McDonnell Douglas Corp. v. Commodore Bus. Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). The district court is not, however, required to review the factual and legal conclusions to which the parties do not object. Thomas v. Arn, 474 U.S. 140, 149 (1985); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003).

Defendants Jackson County and Megan Daniels timely filed objections to Magistrate Judge Stewart's Findings and Recommendation. I have, therefore, given that portion of the Findings and Recommendation a de novo review. I agree with Magistrate Judge Stewart's conclusion that with respect to plaintiff's negligence claim, it is premature to determine whether defendants may argue that they are entitled to a comparison of liability with the absentee State. I

do not interpret Magistrate Judge Stewart's Findings and Recommendation to foreclose the issue. To keep the record clear, I MODIFY Magistrate Judge Stewart's Findings and Recommendation (doc. 84), as follows: the State of Oregon's Motions to Dismiss (docs. 42 & 55) the third-party complaints are GRANTED, and defendants' Motions to Dismiss and Alternative Motions (docs. 57 & 61) are DENIED, with leave to reassert the "alternative" portion of the motion as to plaintiff's negligence claim. I ADOPT the remainder of the Findings and Recommendation in its entirety.

IT IS SO ORDERED.

DATED this 15 day of January, 2010.



James A. Redden
United States District Judge